

REMARKS/ARGUMENTS

Claims 13 - 20 remain in this application. Claims 1 - 12 have been withdrawn from further consideration by the Examiner, as being drawn to a non-elected invention. While not in full agreement relative to the separate and distinct status of said claims 1 - 12, Applicant herewith affirms the election, without traverse, to prosecute the invention of claims 13 - 20. Claim 13 has now been amended so as to more specifically and particularly point out the invention, and to more clearly distinguish from the prior art.

Claims 13 - 20 stand rejected under 35 USC 102(e) as being anticipated by Allison *et al.*, US 6,478,830. The Examiner has cited the Allison *et al.* reference as teaching a composition containing 92.4% hydrogenated mineral oil, 7.5% Kraton thickener, and 0.1% N-lauroyl glutamic acid di-n-butylamide.

Claims 13 - 20 also stand rejected under 35 USC 102(b) and 35 USC 102(e) as being anticipated by Saito *et al.*, US 3,969,087. The Examiner has cited the Saito *et al.* reference as teaching various compositions containing approximately 1% N-lauroyl-glutamic acid di-n-butylamide with various petroleum distillates including heavy oil, spindle oil, vegetable oils, and liquid paraffins, with the thickeners being used in amounts ranging from 0.05 - 20% of the net composition.

By the present amendment, Applicant has amended claim 13, to recite the fact that the present invention comprises a petroleum distillate spray product. All other claims are dependent from claim 13, and so recite this limitation. With respect to the Allison *et al.* reference, it is first noted that the patent is totally deficient in teaching that the compositions thereof are suitable for, or even capable of, dispensing through a spray mechanism, as required in the present invention. In fact, the reference seeks to form a solid body, and is limited to teachings of compositions suitable for use as transparent candles. While it may be argued that variations of the compositions of the reference might in fact be suitable for spraying, there is simply no teaching in the reference that this is the case, in light of the patentee's seeking to substantially thicken

a paraffin base. Further, such a property as sprayability would not be obvious to one of ordinary skill in the art, in light of the purpose of the reference being to prepare a solid body, i.e. a candle, and that the method of preparation of such a candle comprises pouring the mixed composition into a mold or container, and allowing it to cool and solidify. The triblock copolymer and the N-acyl amino acid derivative present in the composition are present for the express purpose of thickening the liquid wax product, and making the wax more suitable for use as a solid candle. In fact, the patentee cites, at column 5, lines 35 - 45 that the Kraton® G polymers *"may absorb up to 20 times their weight in oil, resulting in compositions having varying consistencies from extremely gelatinous to a durable elastic rubbery material. Other triblock copolymers exhibiting similar desirable characteristics may be used in accordance with the present invention."* Nowhere within the teachings of the reference is there any indication that a thinner composition, capable of being sprayed through a nozzle, would be desirable. Clearly the concept of spraying the compositions of the patent is not within the teachings or breadth of the patent, under 35 USC 102, since the stated purpose is to form a transparent *solid* base material, and further, the compositions sought by the patentee would neither teach nor make obvious the sprayable compositions of the present claims.

Moreover, the patentee relies upon the presence of the N-acyl amino acid derivative present only for the purpose of providing transparency and helping to reduce the evaporation rate of any volatile components in the composition, as well as helping to promote formation of the liquid pool around the wick. See column 6, lines 38 - 42, and column 7, lines 28 - 33. Accordingly, the presence of the N-acyl amino acid derivative does not relate in any manner to formation of a spray composition such as taught in the present application. Accordingly, it is submitted that the teachings of the Allison *et al.* reference fail to teach or to make obvious the invention set forth in the claims of the present application, and said claims are believed to be patentable over the Allison *et al.* reference.

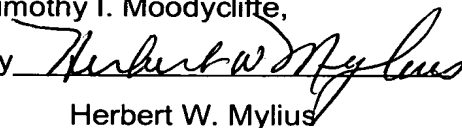
With respect to the Saito *et al.* reference, it must again be noted that the reference has no bearing whatever upon a spray composition, dealing instead with gels formed by mixing non-polar organic liquids with a small amount of N-acyl amino acid or acid derivative. As indicated by the Examiner, the patent teaches the use of N-lauroyl-glutamic acid di-n-butylamide with various petroleum distillates including heavy oil, spindle oil, vegetable oils, and liquid paraffins, *as a thickener*. The patentee states, at column 1, lines 1- 17, "*In the practical use of non-polar organic liquids, it is often desirable to render them solid.*" Further, at column 1, lines 43 - 46, patentees state "*Accordingly, one object of the present invention is to provide a method of gelling non-polar organic liquids with N-acylamino acids and derivatives thereof.*" Thus, while the patent does teach the combination of N-acyl amino acid derivatives with such products as mineral oil, the purpose of such combination is totally distinct from the purpose of the present invention, and there is no teaching or indication that the use of such derivatives will render the products suitable for spraying. Accordingly, it is submitted that the reference fails to teach, or to make obvious, the spray composition of the claims of the present application, and said claims are believed to be patentable over the Saito *et al.* . reference.

In light of this amendment, whereby all claims of this application recite a petroleum distillate spray composition, it is submitted that all of the elected claims now set forth in this application are in condition for allowance, and Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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By



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Version of Claims with markings to show changes Made

In accordance with 37 CFR 1.121(c)(1)(iii), the following constitutes a marked-up version of the Claims amended in the present response, indicating the changes made in the Claims as amended. Only Claim 13 has been amended by the present response.

13 (Currently Amended). A non-aqueous petroleum distillate spray product [suitable for dispensing through a spray mechanism, said product] comprising a petroleum distillate and a shear-thinning thixotropic thickener.